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January 4, 2001

VIA ELECTRONIC FILING

Office of Policy
Office of Economic, Electricity and Natural Gas Analysis
PO-21
Attention: Electric Reliability Comments
U.S. Department of Energy
Forrestal Building, Room 7H-034
1000 Independence Avenue, SW
Washington, D.C. 20585

Dear Sir or Madam:

Forwarded herewith are Comments of the Florida Public Service Commission in response to your Notice of Inquiry regarding Interstate Electric Transmission System; Electric Reliability issued in the Federal Register November 20, 2000.

Sincerely,

/s/

Cynthia B. Miller, Esquire
Bureau of Intergovernmental Liaison

CBM:tf

Enclosures

cc: Chuck Gray, National Association of Regulatory Utility Commissioners

FLORIDA PUBLIC SERVICE COMMISSION COMMENTS

The Florida Public Service Commission (FPSC) would like to offer the following comments in response to the Department of Energy's (DOE) issuance of a Notice of Inquiry issued in the Federal Register November 20, 2000.

The FPSC is concerned at the outset about the Department of Energy's (DOE) proposal to petition the Federal Energy Regulatory Commission (FERC) to adopt rules in place of Congressional action on national reliability. It is our opinion that neither the FERC nor the Department of Energy has jurisdiction to impose reliability standards on the nation's utilities, either jurisdictional or nonjurisdictional. We note that the DOE Notice of Inquiry cites no explicit statutory authority for this reliability endeavor. While the DOE cites to its organizational statute, this is clearly insufficient statutory authority. That statute, which is attached, merely sets out general rulemaking authority. Only Congress may confer the express authority over reliability.

The electric utility industry, through a system of voluntary self-regulation has performed reliability coordination functions through the North American Electric Reliability Council. Peninsular Florida is a stand-alone NERC subregion, and the Florida Regional Coordinating Council (FRCC), in conjunction with the FPSC, takes its responsibility for reliability very seriously.

While FERC Order 2000 is changing the structure and scope of the nation's transmission system, it is, in our opinion, premature for the FERC, via a request from the Department of Energy, to initiate rulemaking in lieu of Congressional action. Based on our readings of the Federal Power Act, none of the sections grant FERC express authority to impose reliability standards; moreover, FERC has indicated in its Orders and in its public statements that it has no express reliability jurisdiction.¹

¹ In his October 5, 1999, testimony before the U.S. House of Representatives Committee on Commerce, Subcommittee on Energy and Power, Chairman James J. Hoecker, stated "while the [FERC] has authority to address

discrimination in jurisdictional transmission services, it has no explicit statutory role in setting or reviewing particular reliability standards or in ensuring the security of the electrical system or the adequacy of supply. That was left largely to the industry and the States.[@] Also, the May 17, 2000, FERC Notice of Interim Procedures to Support Industry Reliability, stated that ~~A~~the Commission does not have direct responsibility over reliability matters.[@]

While much attention has been given to the situation in California, and to the reports of the Secretary of Energy Advisory Board's Task Force and DOE's Power Outage Study Team, many of the problems we are currently observing are not related to the reliability of the transmission system. Instead they merely reflect local distribution problems and/or generation capacity shortfalls, neither of which can be remedied by reliability standards imposed on the newly developing regional transmission organizations or existing NERC reliability councils.

The FPSC does not support the need for national electric reliability statutes, unless a continuing state role over reliability is maintained. We have consistently supported the need for mandatory standards for the nation's electric power system if state commissions have a substantial role in establishing such standards as are appropriate for their state. Therefore, in all of the proposed restructuring bills, including S. 2071, The Electric Reliability 2000 Act, we have suggested a strong state savings clause be included.

Yet the bill, as passed by the Senate, included a much weaker state savings clause. We recommend that in any proposed national legislation the following clause be inserted:

Nothing in this section shall be construed to preempt the authority of a state to take action to ensure the reliability, adequacy, or safety of electric facilities within the state, except where the exercise of such authority has a material adverse impact on the reliable application of the bulk power system.

Florida's role in standard setting and enforcing grid security issues:

Florida Statutes grant the FPSC significant authority in this area so that as reliability problems arise, the FPSC may take action, as needed, to resolve them.²

² **Florida Statutes, Chapter 366.04(2)(c):** In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes: . . . (c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.

Florida Statutes, Chapter 366.04(5): The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

Florida Statutes, Chapter 366.05(7): The commission shall have the power to require reports from all electric utilities to assure the development of adequate and reliable energy grids.

Florida Statutes, Chapter 366.055(1): Energy reserves of all utilities in the Florida energy grid shall be available at all

times to ensure that grid reliability and integrity are maintained. The commission is authorized to take such action as is necessary to assure compliance. However, prior commitments as to energy use: (a) In interstate commerce, as approved by the Federal Energy Regulatory Commission; (b) Between one electric utility and another, which have been approved by the Federal Energy Regulatory Commission; or (c) Between an electric utility which is a part of the energy grid created herein and another energy grid shall not be abridged or altered except during an energy emergency as declared by the Governor and Cabinet.

Florida Statutes, Chapter 366.055(3): To assure efficient and reliable operation of a state energy grid, the commission shall have the power to require any electric utility to transmit electrical energy over its transmission lines from one utility to another or as a part of the total energy supply of the entire grid, subject to the provisions hereof.

Florida PSC's Specific Activities Regarding Grid Security:

- < The FPSC works closely with the Florida Reliability Coordinating Council (FRCC) in an advisory role and has adopted in its rules some of the FRCC's plans for dealing with electrical emergencies in the state.
- < The FPSC has authority over retail service priorities and curtailments.
- < The FPSC requires utilities to file reports containing outage information annually.
- < The FPSC has taken an active role in the resolution of customer complaints regarding the reliability of service from their native utility.
- < The FPSC reviews adequacy of electricity through annual filings of Ten Year Site Plans and through the Power Plant Siting Act.
- < The FPSC has an oversight role with respect to the secure and economical operation of the bundled retail system.

The importance of preserving state authority for that role:

States are in the best position to ensure that grid security is maintained due to special regional circumstances with which the individual states involved are more familiar. Florida, a peninsular state with limited transmission ties to the rest of the country, has somewhat unique circumstances due to its geography. Once a member of the Southeastern Electric Reliability Council (SERC), Florida formed its own reliability council in 1996 to better augment the reliability and adequacy of bulk power supply in Florida and in NERC.⁶ The Florida PSC closely monitors the activities of the FRCC and provides input into the specific standards that the industry sets at the state level. In Florida, this system seems to be working quite well. Where agreement cannot be reached, the Florida PSC has ultimate authority to resolve disputes and establish standards through rulemaking on its own motion.

With respect to the distribution system, no new statutory and regulatory mechanisms are needed at the federal level. States are fully capable of regulating distribution systems to ensure safe and reliable service. States can assure that distribution services continue to be reliable, provided that their authority to

regulate local services and facilities is not preempted by congressional legislation. Likewise, the actions of individual States can assure the reliability of the interstate transmission system.

Thus, any reliability legislation should authorize the national Electric Reliability Organization to adopt *minimum* national standards and permit the states and regional transmission organizations to adopt standards more stringent than these minimum standards. In times of emergencies such as restoring the electric grid after hurricanes in Florida or power shortages in a state or region, the states should be free to adopt standards for affiliated reliability entities and utilities that differ from the national standards and are more stringent.

Conclusion

It is our recommendation at this time that FERC not initiate rulemaking on national reliability.

Respectfully submitted,

/s/

Cynthia B. Miller, Esquire
Bureau of Intergovernmental Liaison

COMMISSION

FLORIDA PUBLIC SERVICE

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DATED: January 4, 2001

42 USCS ' 7173

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*** CURRENT THROUGH P.L. 106-372, APPROVED 10/27/00 *** ** WITH A GAP OF 106-369 ***

TITLE 42. THE PUBLIC HEALTH AND WELFARE CHAPTER 84. DEPARTMENT OF ENERGY FEDERAL ENERGY REGULATORY COMMISSION

42 USCS ' 7173 (2000)

' 7173. Initiation of rulemaking proceedings before Commission

(a) Proposal of rules, regulations, and statements of policy of general applicability by Secretary and Commission. The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 402 of this Act [42 USCS ' 7172]. (b) Consideration and final action on proposals of Secretary. The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal. (c) Utilization of rulemaking procedures for establishment of rates and charges under Federal Power Act [16 USCS ' ' 791a et seq.] and Natural Gas Act [15 USCS ' ' 717 et seq.]. Any function described in section 402 of this Act [42 USCS ' 7172] which relates to the establishment of rates and charges under the Federal Power Act [16 USCS ' ' 791a et seq.] or the Natural Gas Act [15 USCS ' ' 717 et seq.], may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views. (d) Submission of written questions by interested persons. With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act [15 USCS ' ' 717 et seq.], the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

HISTORY: (Aug. 4, 1977, P.L. 95-91, Title IV, ' 403, 91 Stat. 585.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES Effective date of section: This section became effective on Oct. 1, 1977, as prescribed by the President by Ex. Or. No. 12009 of Sept. 13, 1977, ' 1, 42 Fed. Reg. 46267 (revoked by Ex. Or. No. 12553, Feb. 25, 1986, 51 Fed. Reg. 7237), which formerly appeared as a note to 42 USCS ' 7341.

NOTES: CROSS REFERENCES This section is referred to in 42 USCS ' 7174.